National Energy Board

Office national de l'énergie

Reasons for Decision

Repsol Energy Canada Ltd.

GH-1-2008

September 2008

LNG Import
Gas Export

Canada

National Energy Board

Reasons for Decision

In the Matter of

Repsol Energy Canada Ltd.

Application dated 27 December 2007 for a Licence to Import Natural Gas in Liquefied Form and a Licence to Export Natural Gas under section 117 of the *National Energy Board Act*

GH-1-2008

September 2008

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Abbreviations

Brunswick Pipeline	Emera Brunswick Pipeline
CAPP	The Canadian Association of Petroleum Producers
Canaport LNG Terminal	Canaport LNG Marine Terminal and Multi-Purpose Pier
EIA	Export Impact Assessment
Emera Brunswick Ltd.	Emera Brunswick Pipeline Company Ltd.
GPSA	Gas Purchase and Sale Agreement
Irving Oil	Irving Oil Limited and its affiliates (collectively, "Irving Oil")
LNG	Liquefied natural gas or natural gas in liquefied form
MBP	Market-Based Procedure
M&NE U.S. Pipeline	United States portion of Maritimes & Northeast Pipeline
NB	New Brunswick
NEB Act or Act	*National Energy Board Act*
NSDOE	Nova Scotia Department of Energy
Part VI Regulations	*National Energy Board Act Part VI (Oil and Gas) Regulations*
PNGTS	Portland Natural Gas Transmission System
RENA	Repsol Energy North America Corp.
Repsol or the Applicant	Repsol Energy Canada Ltd.
Repsol C	Repsol Comercializadora de Gas, S.À.
Repsol YPF	Repsol YPF, S.A.
SPA	Sale and Purchase Agreement
U.S.	United States

Recital and Appearances

IN THE MATTER OF the *National Energy Board* Act and the regulations made thereunder; and

IN THE MATTER OF an application dated 27 December 2007 by Repsol Energy Canada Ltd. for a licence to import gas in liquefied form and another licence to export natural gas, pursuant to Part VI of the *National Energy Board Act*, filed with the National Energy Board under File No. OF-EI-Gas-GL-R153 01; and

AND IN THE MATTER OF National Energy Board Hearing Order GH-1-2008 dated 29 January 2008;

HEARD in Saint John, New Brunswick on 27 and 28 May 2008;

BEFORE:

Mr. K.M. Bateman	Presiding Member
Ms. S.A. Leggett	Member
Ms. G.A. Habib	Member

Appearance	**On behalf of**	**Witnesses**
Applicant		
Mr. L. Keough Ms. K. Beattie	Repsol Energy Canada Ltd.	Mr. J. Jensen Mr. J. Reed Mr. V. Morrisette Mr. P. Ribbeck Mr. D. Marcoux
Intervenors		
Associations		
Mr. N.J. Schultz	Canadian Association of Petroleum Producers	
Companies		
Mr. P.T. Zed	Emera Brunswick Pipeline Company Ltd.	
Mr. J.H. Smellie	Irving Oil	
Individuals		
Ms. T. Debly	On her own behalf	
Mr. H. Sauerteig	On his own behalf	

Governments

Mr. A. Bilodeau	New Brunswick Department of Energy
Mr. M. Rieksts	Nova Scotia Department of Energy

Oral Statement

Ms. I. Gilman	Saint John Board of Trade

Counsel to the National Energy Board

Ms. R.M. Zanin
Mr. D. Saumure

Chapter 1

Introduction

On 27 December 2007, Repsol Energy Canada Ltd. (Repsol or the Applicant) applied to the National Energy Board (NEB or Board) under Part VI, section 117 of the *National Energy Board Act* (NEB Act or Act) for a licence to import natural gas in liquefied form (LNG) into Canada at the Canaport LNG Marine Terminal and Multi-Purpose Pier (Canaport LNG Terminal) near Saint John, New Brunswick (NB). Once LNG is regasified, the natural gas will be available to serve the domestic Canadian market and export market in the United States (U.S.).

Repsol also applied for a separate licence to export natural gas to the U.S. via the Emera Brunswick Pipeline (Brunswick Pipeline) which extends from the Canaport LNG Terminal to a point on the international border near St. Stephen, NB, where it will interconnect with the U.S. portion of the Maritimes & Northeast Pipeline (M&NE U.S. Pipeline).

Table 1-1 summarizes the requested terms and conditions and Figure 1-1 shows the proposed import and export points and the pipelines in Maritimes Canada and the Northeast United States.

Table 1-1
Summary of Applied-for Licences

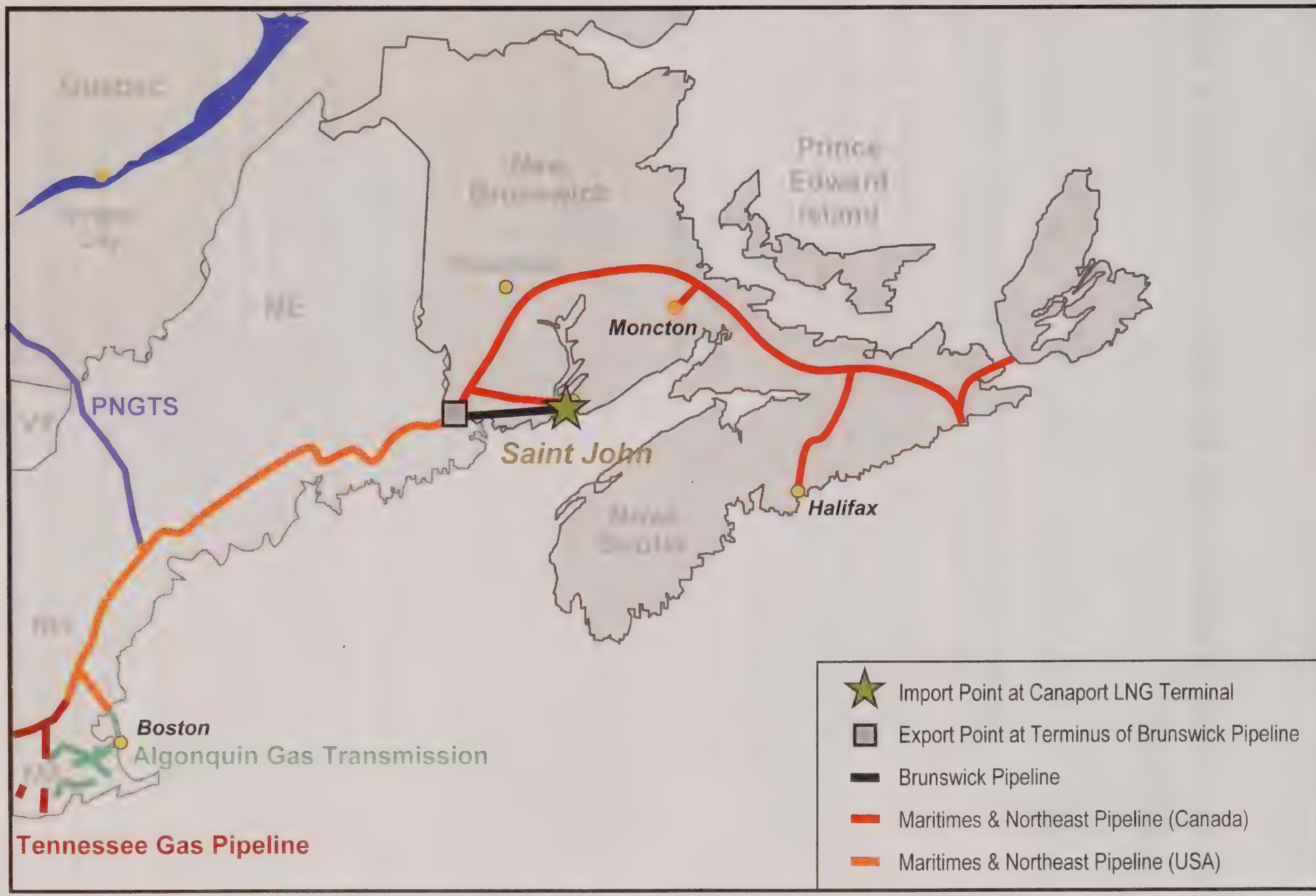
	Licence to Import LNG	**Licence to Export Gas**
Term	25 years commencing on the date of first deliveries	25 years commencing on the date of first deliveries
Maximum Term Quantity	262,000,000 10^3m^3 (9,250 Bcf) of LNG in its gaseous state or 198,200,000 tonnes of LNG	258,500,000 10^3m^3 (9,125 Bcf)
Maximum Annual Quantity	10,480,000 10^3m^3 (370 Bcf) of LNG in its gaseous state, or 7,927,000 tonnes of LNG	10,340,000 10^3m^3 (365 Bcf)
Maximum Daily Quantity	Not Applicable (N/A)	28,320 10^3m^3 (1 Bcf)
Annual Tolerance	10%	10%
Daily Tolerance	N/A	20%
Point of Import/Export	Canaport LNG Terminal	Terminus of Brunswick Pipeline at the international border near St. Stephen, NB

On 29 January 2008, the Board issued Hearing Order GH-1-2008, which set out the procedure to be followed in considering Repsol's application. The Board received and accepted 16 applications for intervenor status. Having considered the submissions of intervenors and Repsol, the Board, by letter dated 19 March 2008, issued amended Hearing Order AO-1-GH-1-2008 and revised the List of Issues (see Appendix I).

By letter dated 15 April 2008, the Board invited submissions from all parties on the interpretation of the equitable distribution provision of subsection 118(c) of the NEB Act and the manner in which such interpretation should be applied in the context of the current proceeding.

The Board held the oral portion of the hearing on 27 and 28 May 2008 in Saint John, NB.

Figure 1-1
Import Point and Export Point of Proposed Licences and Pipelines in Maritimes Canada and the Northeast United States



Chapter 2

Regulatory Framework for Gas Import and Export Licences

In considering licence applications for the import or export of natural gas into or out of Canada, the Board must comply with section 118 of the NEB Act, which provides as follows:

> s. 118. On an application for a licence, the Board shall have regard to all considerations that appear to it to be relevant and shall
>
> (a) satisfy itself that the quantity of oil or gas to be exported does not exceed the surplus remaining after due allowance has been made for the reasonably foreseeable requirements for use in Canada having regard to the trends in the discovery of oil or gas in Canada; and
>
> (b) [Repealed, 1990, c. 7, s. 32]
>
> (c) where oil or gas is to be exported and subsequently imported or where oil or gas is to be imported, have regard to the equitable distribution of oil or gas, as the case may be, in Canada.

The Applicant has applied for a licence permitting it to import LNG into Canada. This is the first application of its kind in Canada and the first time the Board has been required to interpret subsection 118(c) of the Act in this context. In terms of considering license applications to export natural gas, the Board employs a well-established regulatory approach, known as the Market-Based Procedure (MBP), although there has not been an export licence application before the NEB since 1999.

2.1 Regulatory Framework for Gas Export Licence

In March 1985, the Governments of Canada and the three Western producing provinces entered into an agreement on the pricing and taxation of oil and gas (Western Accord) establishing the principle that oil and gas prices would be determined by negotiation between buyers and sellers. The Western Accord led to the signing by these Governments on 31 October 1985 of an agreement on natural gas markets and prices (generally referred to as the Halloween Agreement) setting out the policy framework, including terms and conditions, under which gas exports under licence would be permitted.

Pursuant to a *Review of Natural Gas Surplus Determination Procedures* (GHR-1-87) the Board implemented a procedure (the MBP) by which the Board would assess licence applications to export natural gas. The MBP is founded on the premise that the marketplace operates in such a way that Canadian requirements for natural gas will be met at fair market prices. The MBP was

refined in subsequent public hearings, including the GHW-4-89 and the GHW-1-91 proceedings. These modifications do not affect the premise upon which the MBP is based.

The MBP is designed to establish that the proposed export of natural gas is both surplus to reasonably foreseeable Canadian requirements and is in the public interest. The MBP consists of two components: a public hearing as required by the Act and ongoing monitoring of Canadian energy markets. A description of the Board process used to assess gas export licence applications follows.

2.1.1 Public Hearing

The public hearing comprises three parts: the Complaints Procedure, the Export Impact Assessment and the Other Public Interest Considerations.

A. Complaints Procedure

The Complaints Procedure seeks to ensure that active Canadian buyers have access to gas supply on terms and conditions similar to those available to export customers. The Board must consider any complaint from Canadian gas buyers who object to the proposed export on grounds that they have not had the opportunity to buy gas on terms and conditions, including price, similar to those of the proposed export.

B. Export Impact Assessment (EIA)

The focus of an EIA is to assist the Board in its determination of whether the Canadian energy market can adjust to incremental gas exports without causing Canadians difficulty in meeting their energy needs at prices determined in the market.

C. Other Public Interest Considerations

In addition to the Complaints Procedure and the EIA, the Board has regard to other public interest considerations including, but not limited to:

- assessing gas supply under contract;
- assessing the likelihood that licensed volumes will be taken;
- assessing the durability of gas sales contracts;
- having regard to whether gas sales contracts were negotiated at arm's length;
- verifying that there is producer support for a gas export application;
- verifying that there are provisions in the gas sales contract for the payment of the associated transportation charges on Canadian pipelines over the term of the gas sales contract;
- determining the appropriate length of term for an export licence, having regard to:
  - (i) evidence on the adequacy of the gas supply available to the export licence applicant to support the applied-for volumes over the requested licence term;

(ii) evidence on the necessity of the requested term in light of the terms of the associated gas sales and transportation contracts and the terms of the approvals from other regulatory bodies;

(iii) any other evidence which the Board deems to be relevant to the appropriate term of the licence; and

- assessing potential environmental effects of facilities associated with the licence.[1]

2.1.2 Ongoing Monitoring

Under the MBP, the Board monitors Canadian energy supply and demand to ensure that natural gas markets are functioning properly. Monitoring assists the Board in identifying situations where markets may not be functioning properly or cases where the evolution of supply and demand cast doubt on the ability of Canadians to meet their future energy requirements.

Views of the Applicant

Repsol submitted that the public interest determination associated with an export licence for Canadian gas would typically be assessed in the context of the Board's MBP, and that one of the primary purposes of the MBP is to ensure that the natural gas being licensed for export is both surplus to reasonably foreseeable Canadian requirements and in the public interest.

Nevertheless, Repsol asserted that the export of regasified LNG is different from the export of natural gas produced in Canada. Therefore, the approach traditionally employed by the Board in the context of gas exports might not be fully applicable. Since the regasified LNG would enhance the overall supply available to meet Canadian requirements, the MBP should be applied more flexibly to recognize the unique circumstances of exporting regasified LNG.

Repsol further submitted that even though it does not have any firm contracts with Canadian suppliers for the export of gas, it should have the flexibility, under the proposed licence, to export domestically produced gas. Such gas would be exported in addition to, or in lieu of, imported regasified LNG. If Repsol had the opportunity to acquire and export gas sourced in Canada at some point in time over the course of the 25 year licence, it would be because market forces have made such a transaction possible. According to Repsol, exporting this gas should not have an impact on future Canadian gas requirements and hence would be consistent with the intent of the MBP and with current market-based environment.

Views of Intervenors

The Canadian Association of Petroleum Producers (CAPP) provided submissions focusing on the Board's application of the MBP in the context of a market-based energy policy. CAPP stated that the key tools established under the MBP would allow the Board to assess Repsol's application.

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1 Specifically, the Board employs the necessary connection test, i.e., the export licence and upstream facilities or activities must be integrated to the extent that they can be seen to form part of a single course of action.

Irving Oil Limited and its affiliates, collectively "Irving Oil" (Irving Oil) submitted that the MBP remains the current means by which the Board must assess the Repsol Application. Irving Oil's view was that it should be applied in a manner consistent with the underlying policy precepts of the Government of Canada, namely the market-based energy policy discussed by CAPP. Irving Oil recognized the unique nature of the LNG business and urged the Board to apply the MBP to fit this circumstance.

Nova Scotia Department of Energy (NSDOE) submitted that the MBP should be applied to the assessment of Repsol's application for the export of regasified LNG in the same manner that it would be applied to a party seeking to export Canadian-produced gas. In NSDOE's view, there is no distinction in the Act which differentiates the export of indigenous supply and that of imported natural gas. Further, since Repsol amended its original position, as set out in its application, from seeking to export only regasified LNG to using its proposed export licence to also export Canadian supplies, the application of the MBP is fully applicable.

Views of the Board

According to Repsol, the free operation of the market in a deregulated environment satisfies any statutory requirements the Board may have under subsection 118(a) of the Act. Consequently, Repsol asserted that Canadian-produced gas secured under market terms at some point in the future would demonstrate that the requirements of the MBP and ss. 118(a) of the Act are met today. In the Board's view, Repsol's proposed approach is markedly different from the current NEB approach where, among other requirements, supply arrangements have to be in place at the time of application.

The Board recognizes that the Canadian gas market has evolved since the Halloween Agreement was signed in 1985 but believes that the principles of the Agreement remain unchanged. Having considered the views of parties to this proceeding, the Board is of the opinion that there is no compelling reason to abandon or modify the MBP insofar as it relates to the assessment of licences to export Canadian sourced gas. Moreover, any fundamental modifications, if they were to be contemplated, would require input from a wide range of stakeholders. This, in the Board's view, is outside the scope of this proceeding. In this case, the Board finds that the requirements to ensure that Canadian gas demand is satisfied, that export licences of domestically produced gas are supported by supply arrangements and other relevant public interest considerations are still met by the application of the MBP.

For the purposes of examining a request to export regasified LNG that is being imported into Canada, the Board accepts that imported gas is incremental to Canadian production. However, the Board is of the view that the MBP should be applied to assess the merits of this application in the context of increased supplies and future Canadian requirements.

Having found that the MBP is the appropriate approach to be applied to assess export licence applications, the Board will apply the MBP in a manner that recognizes the specific circumstances of this case, as discussed in Chapter 4 of these Reasons.

2.2 Regulatory Framework for Gas Import Licence

Subsection 118 (c) of the NEB Act provides that where gas is to be imported under a licence, the Board shall have regard to the equitable distribution of that gas in Canada. The Board invited submissions from the parties on the interpretation of this subsection with respect to the manner it should be applied in the context of Repsol's application to import LNG into Canada.

Views of the Applicant

The Applicant asserted that Canada's energy market is fully deregulated and suggested that ss. 118(c) has no applicability to the assessment of its application. In its view, Parliament did not intend ss. 118(c) to be applicable to import licence applications once the market had been deregulated. Repsol asserted that in a deregulated market, the market itself would determine where natural gas will flow rather than the equitable distribution provision of the NEB Act.

In its reply argument, Repsol submitted that the Board is required to consider ss. 118(c) when deciding on an import licence application. However, Repsol stated that the principle of equitable distribution can be achieved in a deregulated market.

Views of Intervenors

CAPP supported Repsol's position, and also provided its views on the interpretation of ss. 118(c). CAPP's submissions consisted of the legislative history surrounding the enactment of what was then ss. 83(c) (now ss. 118(c)). CAPP suggested that ss. 118(c) would only apply in the event that Parliament directs the Board to regulate the interprovincial trade of oil or natural gas.

Irving Oil echoed the submissions of Repsol and CAPP suggesting that the equitable distribution requirement should have no direct application in today's deregulated market. In the alternative, Irving Oil suggested that the manner in which the project was underpinned along with Repsol's commitment to make reasonable volumes available to Maritime markets embraces the concept of equitable distribution.

NSDOE's submissions on statutory interpretation[2] together with its views of Parliament's intention suggested that the provision was meant to address public interest concerns with respect to the market "adequately and fairly" serving the needs of Canadians. In NSDOE's view, the equitable distribution of gas means the distribution within Canadian markets is adequate and fair in terms of supply and price.

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2 NSDOE provided the Board with detailed submissions on statutory interpretation based upon the current jurisprudence. NSDOE cited the Supreme Court of Canada's decision in Bell Express Vu Limited Partnership v. Rex.

Applying the presumption that statutory language is deemed to be neither superfluous nor meaningless, NSDOE submitted that since ss. 118(c) was not amended or repealed following the adoption of a market-based policy for the Canadian gas market. It follows that the concept of "equitable distribution" still applies to the assessment of import licence applications within the "deregulated marketplace".

Views of the Board

The rules of statutory interpretation require that ss. 118(c) be interpreted liberally, purposively and contextually. The Board therefore examined the wording of this provision within the context of the section in its entirety and within the context of the NEB Act.

The Board notes that section 118 has been amended since the adoption of market-based policies and Parliament has seen fit to leave subsections 118(a) and (c) unaltered. The Board is therefore of the view that Parliament continues to intend that equitable distribution be considered prior to issuing gas import licences.

The issue that remains is the manner in which the intent can be achieved. The Board is of the view that ss. 118(c) can be satisfied through a market-based approach. Therefore, for the purposes of this import application, the Board will consider whether Repsol will make gas available to active Canadian gas buyers on similar terms and conditions as those offered to the export gas buyers. Furthermore, the Board notes that it has tools at its disposal to help ensure that markets continue to function properly including ongoing monitoring, hearing complaints in relation to accessing regasified LNG and conducting inspections under the *National Energy Board Act Part VI (Oil and Gas) Regulations* (Part VI Regulations).

Chapter 3

Licence Application to Import Natural Gas in Liquefied Form

3.1 Import Licence Application

By application dated 27 December 2007, Repsol sought a licence to import LNG with the terms and conditions summarized in Table 1-1. The LNG proposed to be imported would be purchased by Repsol from Repsol Comercializadora de Gas, S.A. (Repsol C) and would be delivered by tankers to the Canaport LNG Terminal. In future, Repsol may also source LNG from unrelated parties.

LNG would be stored and regasified at the Canaport LNG Terminal, the outlet of which is directly connected to the Brunswick Pipeline. Regasified LNG would be available to serve the domestic Canadian market and the anchor U.S. export market, primarily the U.S. Northeast market, using the Brunswick Pipeline. Gas exported to the United States would be purchased by Repsol Energy North America Corporation (RENA) at the Canada/U.S. border and then resold to third parties.

Repsol, Repsol C and RENA are indirect wholly owned subsidiaries of Repsol YPF, S.A. (Repsol YPF) and are therefore affiliated companies.

3.2 LNG Supply and Market

Repsol retained Jensen Associates to provide an independent study on LNG trade and changes in LNG liquefaction and re-gasification capacity worldwide. Dr. Jensen provided a perspective on the availability of LNG supply to Repsol and Canaport LNG Terminal. Dr. Jensen testified that the Repsol group of companies is the model of an integrated LNG company with both upstream supply and downstream terminal facilities and therefore is a major player in the LNG market.

The parent company of the Repsol group is Repsol YPF, which has its corporate head office in Madrid, Spain. Repsol YPF is a publicly traded limited liability integrated oil and gas company with diversified energy interests. It has global operations and is pursuing an integrated LNG investment strategy including gas production, liquefaction, shipping, regasification and gas pipeline facilities. In 2006, Repsol YPF had consolidated operating revenues in excess of 55 billion euros ($78.3 billion) and net income of about 3 billion euros ($4.27 billion). Its long-term debt was rated investment grade by Standard & Poor's (BBB) and Moody's (Baa1). No change to these bond ratings occurred in 2007.

To secure LNG supply, Repsol has a 25-year LNG Sale and Purchase Agreement (SPA) with Repsol C. This agreement, dated 21 December 2007, covers the sale, transport and delivery of LNG to the Canaport LNG Terminal. In accordance with this agreement, Repsol may purchase up to a maximum annual quantity of 388,232,000 MMBtu (10,480,000 10^3m^3 or 370 Bcf) of

LNG in its gaseous state. Repsol submitted that the contract price is a factor of an index price less transportation and re-gasification costs.

Repsol's LNG supply comes from the pool of global LNG available to Repsol C and is governed by a corporate supply warranty. Repsol's SPA with Repsol C is not supported by any dedicated reserves or a specific supply source. Repsol has cited supply from Trinidad & Tobago as a likely primary source of LNG for Canaport, and expects volumes from this source to be at least 750,000 MMBtu/d. Repsol also stated that Repsol C has a portfolio of supply that would be at least 1 Bcf/d over a 25-year period. In addition, Repsol indicated that this may be supplemented by supply contracts with third parties, but that no contracts were currently in place.

In support of its application, Repsol also provided information on the market for regasified LNG from the Canaport LNG Terminal. (See section 4.4 of these Reasons.)

3.3 LNG Transportation and Canaport LNG Terminal Capacity

The LNG to be supplied to Repsol by Repsol C will be transported by a fleet of certified LNG vessels under long-term charter to Repsol affiliates. Repsol indicated that the current fleet of ships would be capable of transporting all of the LNG under contract to the Canaport LNG Terminal.

Repsol will hold contracted capacity for 25 years at the Canaport LNG Terminal which is currently under construction near Saint John, NB and scheduled to be completed by late 2008. Repsol affiliates hold an aggregate 75% interest in Canaport LNG Limited Partnership, the developer and owner of the Canaport LNG Terminal. The remaining 25% interest in the Canaport LNG Limited Partnership is owned by affiliates of Irving Oil.

The Canaport LNG Terminal will be a single berth facility with the ability to store 9.5 Bcf (gas equivalent) of LNG. Repsol indicated that the expected peak and average send-out capacity of the Canaport LNG terminal will be 1.2 Bcf/d and 1 Bcf/d, respectively. The Canaport LNG Terminal is able to receive LNG ships of the largest size available today, the Q-Max tanker, which could effectively increase receiving capacity to about 1.5 Bcf/d.

3.4 Regulatory Authorizations and Environmental Impacts

During this proceeding Repsol filed the requisite regulatory authorizations including the Comprehensive Study Report on a joint environmental assessment and review of the then Irving LNG Marine Terminal and Multi-Purpose Pier (now the Canaport LNG Terminal). Repsol indicated that all required approvals for the Canaport LNG Terminal have been obtained by the Canaport LNG Limited Partnership and as such, all relevant issues related to environmental impacts of the facilities have been addressed.

Views of the Applicant

Repsol contended that its long-term arrangement to secure LNG supply, the significant investment of the Repsol group of companies in the construction of the Canaport LNG Terminal, the long-term contractual obligations that it has undertaken for capacity at the Canaport LNG

Terminal and long-term firm transportation on the Brunswick Pipeline are evidence of its intent and desire to utilize the Canaport facilities and the applied-for import licence at a high level.

Repsol took the position that it would satisfy the "equitable distribution" requirement of subsection 118(c) of the NEB Act, by agreeing to make gas available to Maritimes Canada buyers on similar terms and conditions that RENA would be accepting from Repsol, including a similar price. Furthermore, Repsol would have to compete with the prices offered by other Maritimes market suppliers in order to provide natural gas to customers in the Maritimes Canada market.

According to Repsol, the requested ten percent annual tolerance for imported gas quantity was required to ensure that Repsol could flexibly serve market needs if additional cargos were available at year end. Repsol indicated that LNG cargos are bulk shipments that can be secured within a week's notice and that the gas transportation process is very inexact. Consequently, Repsol did not want to be restricted in its ability to serve the market.

Lastly, the Applicant indicated that, should the requested licence be granted, it would file all the information prescribed in the *National Energy Board Export and Import Reporting Regulations*. As well, Repsol agreed to report information on the LNG country of origin, name of the LNG tanker and LNG volume in cubic metres in its gaseous state and in tonnes.

Views of Interested Parties

Interested parties supporting the application were the Saint John Board of Trade, Emera Brunswick Pipeline Company Ltd. (Emera Brunswick Ltd.), Irving Oil and the New Brunswick Department of Energy. These parties largely supported the import application for economic development and commercial reasons. CAPP had no comment on Repsol's application for an import licence but expressed its views in support of a market-based energy policy and regulation.

NSDOE noted that the Maritimes gas market is not well developed, liquid or transparent. According to NSDOE, the number of market participants is small and the number of affiliate transaction agreements involved in the present application attests to this fact. If the ongoing negotiation between Repsol and Irving Oil should result in an agreement, Irving Oil would be the exclusive marketer for Maritimes Canada of regasified LNG from the Canaport LNG Terminal. NSDOE therefore expressed concerns with Canadian access to the LNG volumes that Repsol proposed to import although, in principle, the NSDOE did not oppose the application for an import licence by Repsol. NSDOE urged the Board to include a condition on the import licence that Repsol file with the Board, on a confidential basis, the marketing and distribution agreement with Irving Oil once an agreement is concluded.

Mr. Sauerteig also expressed concern about access, particularly New Brunswick homes and businesses having access to natural gas imported by Repsol. He was of the view that since this application is the first of its kind in Canada, the NEB should adopt a more cautious approach and allow Repsol a 10-year import licence instead of the applied for 25 years. He suggested that this would be a reasonable timeframe for Repsol to demonstrate that its marketing model will work. Like the NSDOE, Mr. Sauerteig noted that Repsol has yet to conclude a marketing contract with

Irving Oil and that there is no direct access to Canadian domestic markets from the Brunswick Pipeline.

Views of the Board

LNG Supply and Gas Market

The LNG importation proposed by Repsol is not supported by dedicated supply or gas supplies under contract. Nevertheless, in light of the specific nature of the LNG business in the Atlantic Basin, the Board is satisfied that the corporate warranty arrangement entered into by Repsol for the import of LNG to the Canaport LNG Terminal would allow the Applicant to secure adequate LNG supply. In the Board's view, the Repsol Comercializadora de Gas, S.A. corporate warranty offers the flexibility to draw from diverse sources and fields and that a portfolio of supply sources can mitigate potential supply problems associated with obtaining supply from dedicated pools or sources.

The Board acknowledges the substantial assets and commitments made by the Repsol group of companies along the entire LNG supply and market chain including liquefaction facilities, LNG tanker charters, the Canaport LNG Terminal, and 25-year firm service agreements with Emera Brunswick Ltd. in Canada and Maritimes & Northeast Pipeline, L.L.C in the United States. In addition, the Board is persuaded that the Repsol group of companies is an integrated global LNG market participant and has the financial and operational capacity to acquire significant LNG supply. The Board is also of the view that, because of the long-term nature of these assets and commitments, Repsol will make every effort to obtain LNG supply from its affiliates or third parties in order to highly utilize its assets to secure a return on its investments.

Equitable Distribution

As discussed in Chapter 2, the Board is of the view that the equitable distribution provision of the Act can be satisfied through a market-based regulatory approach. The Board acknowledges the Applicant's commitment to make gas available to the Canadian market. In this case the Board finds that Canadian purchasers will have access to the imported regasified LNG on similar terms and conditions, including price, as export customers.

The Board is cognizant of NSDOE's concerns about the nascent nature of the Maritimes market. As discussed, the Board will continue its ongoing monitoring of natural gas markets which, for the Maritimes market, will include LNG imports. The Board will consider any complaints from Canadian gas buyers also and may conduct inspections under the Part VI Regulations. Accordingly, the Board finds that it is not necessary at this

time to require Repsol to file the marketing and distribution agreement between it and Irving Oil when concluded. This does not preclude an interested party from raising concerns at some later date concerning terms and conditions to access the proposed imported LNG.

Licence Term and Conditions

The Board notes the views expressed by Mr. Sauerteig, who proposed that the import licence term should be limited to ten years. However, the Board finds that the applied-for 25-year term of the licence is consistent with the term of contractual commitments for LNG supply, transportation and export sales made by the Applicant. The Board is of the view that the 25-year term would assist Repsol in attracting LNG to the Canaport LNG Terminal and thus provide stability for long-term market arrangements.

Similarly, the Board notes that the applied-for import volumes are consistent with the contracted supply, the average Canaport LNG Terminal receiving capacity (about 1Bcf/d) and the receiving capability of the Brunswick Pipeline. The Board is satisfied that Repsol has the incentive to import the requested LNG volumes at the Canaport LNG Terminal and that those volumes will be taken.

In regard to Repsol's request for a ten percent annual tolerance, the Board sees merit in the request because of the need to manage variability in LNG supply. Such supply is delivered by individual tankers capable of delivering up to 1.5 Bcf/d of LNG (in its gaseous state) to the Canaport LNG Terminal. As well, the requested annual tolerance would give Repsol the flexibility to effectively manage storage inventory at Canaport and would also assist Repsol to meet fluctuations in market demand.

It has been Board practice in issuing gas export licences to stipulate a sunset condition that sets forth an initial period of time during which the export of gas must commence in order for the licence to remain in effect. In this proceeding, Repsol did not take issue with the Board's intention to apply a two-year sunset clause to the import licence that the Board may issue. Accordingly, should the Board decide to issue the import licence to Repsol, the Board considers it appropriate to extend the practice of having a sunset clause to gas import under licence and would require the import of LNG to commence within two years of the licence start date.

Reporting

The Board notes Repsol's commitment to comply with NEB reporting requirements for licence holders, should the Board grant the applied-for licence. It is expected that Repsol will comply with all aspects of the *NEB Export and Import Reporting Regulations*, including the provision of price information and additional information as required by the Board, namely,

the LNG country of origin, name of the LNG tanker and the LNG volume in its gaseous state and in tonnes in order to facilitate the Board's ongoing monitoring of the Maritimes gas market.

3.5 Conclusion

The Board is satisfied that the proposed import of LNG at the Canaport LNG Terminal is in the Canadian public interest. The Board concludes that these volumes are incremental to Canadian supply and may enhance the supply available to Canadians to meet their energy needs. Moreover, the Board is satisfied that Repsol will make imported LNG available to active Canadian buyers on similar terms and conditions, including price as those available to export customers. Lastly, the Board will continue its ongoing monitoring of natural gas markets which, for the Maritimes market, will include LNG imports.

Decision

The Board has decided to issue a licence to import natural gas in liquefied form with the terms and conditions described in Appendix II to Repsol Energy Canada Ltd., subject to the approval of the Governor in Council.

Chapter 4

Licence Application to Export Natural Gas

4.1 Export Licence Application

By Application dated 27 December 2007, Repsol sought a licence to export natural gas with the terms and conditions as described in Table 1-1. In its application, Repsol proposed to export natural gas from regasified LNG imported at the Canaport LNG Terminal. Subsequently, during the NEB written Information Request process, Repsol further identified natural gas produced in Canada as an additional potential source of export gas.

Regasified LNG imported at the Canaport LNG Terminal would be delivered to domestic and export markets via the Brunswick Pipeline. LNG received at the Canaport LNG terminal is currently the only source of gas supply connected to the Brunswick Pipeline.

In the event that Canadian gas production could be connected to the Brunswick Pipeline in the future, Repsol also requested the ability to export that gas under the applied-for licence. The ability to export indigenous gas is sought by Repsol primarily as a source of replacement gas in the event that it experienced a shortage in LNG supply. Repsol also identified the possibility of acquiring Canadian gas as part of its marketing activities and exporting this gas using the same licence.

4.2 Gas Supply

In support of its application, Repsol provided information on its LNG supply, which is summarized in section 3.2 of these Reasons. Regarding gas produced in Canada, Repsol did not file any gas purchase contracts nor did Repsol file any evidence that such gas is available to it at this time for export via the Brunswick Pipeline to the export point near St. Stephen, NB.

4.3 Transportation

In addition to its LNG transportation arrangements outlined in section 3.3 of these Reasons, Repsol has entered into a 25-year Firm Service Agreement with Emera Brunswick Ltd. to transport natural gas from the outlet of the Canaport LNG re-gasification facility for delivery to the interconnect with the M&NE U.S. Pipeline at the Canada-U.S. border. Repsol has contracted and is obligated to pay demand charges for 791,292 GJ/d (approximately 750 MMcf/d) of firm transportation service on the Brunswick Pipeline for 25 years and will have priority access to additional capacity above this level.

Although the firm service agreement with Brunswick Pipeline has no restriction on the source of gas supply to be transported, the Brunswick Pipeline is not connected to any domestic gas supply at this time. In addition, Repsol did not provide evidence in this application that facilities to connect future supply had been contracted for or subject to environmental assessment. No

export point other than the terminus of the Brunswick Pipeline near St. Stephen, NB was identified by Repsol in this application.

From the international border, the gas would be sold by Repsol to RENA and transported on the M&NE U.S. Pipeline to interconnections with Tennessee Gas Pipeline and Algonquin Gas Transmission.

RENA has entered into a 25-year firm Transportation Service Agreement with Maritimes & Northeast Pipeline, L.L.C. for 730,000 Dth/d (approximately 730 MMcf/d net of fuel) with the ability to transport additional quantities via interruptible or operationally available capacity. RENA is obligated to pay demand charges for this firm transportation service.

4.4 Markets

Market studies prepared by Concentric Energy Advisors were filed by Repsol to indicate the potential future natural gas demand in Maritimes Canada and the U.S. Northeast. These studies concluded that there is sufficient long-term demand in Atlantic Canada and the U.S. Northeast to accept the proposed LNG volumes from the Canaport LNG Terminal.

Testimony by Concentric Energy Advisors indicated that the projected growth in natural gas demand in Atlantic Canada is dependent on additional gas supplies being available from LNG. The projected regional demand is based on a forecasted reduction in Canadian supply for both domestic use and export to the U.S. Northeast.

The demand projections also indicated that the Atlantic Canadian market by itself is not sufficient to absorb the entire output from the Canaport LNG Terminal. Repsol indicated in its application that the ability to export the natural gas to serve anchor markets in the U.S. Northeast is therefore fundamental to the availability of incremental supplies to serve Canadian markets.

Repsol has entered into a 25-year Gas Purchase and Sales Agreement with RENA for export sales of up to 1 Bcf/d (28,320 10^3m^3 /d) of natural gas. Repsol has also been negotiating an exclusive marketing agreement with Irving Oil to provide natural gas to Irving Oil for its own use and for resale to other parties in Maritimes Canada. Repsol may also perform marketing and trading services in Canada outside of the Maritimes.

RENA, an affiliate of Repsol, would be the importer of the natural gas into the U.S., as well as the shipper on U.S. pipelines. RENA would not be the ultimate consumer of gas, but is a marketer and trader of the natural gas in the U.S. that will make arm's-length sales to third parties. RENA also could indirectly serve markets in Atlantic and Central Canada through the re-import of exported gas by third parties.

4.5 Gas Export Sales Contract

Repsol did not file with the Board any arm's-length gas sales agreement underpinning the proposed export. Instead, Repsol filed its inter-affiliate Gas Purchase and Sale Agreement (GPSA) with RENA, dated 21 December 2007.

While the GPSA is not arm's-length, Repsol stated that all of RENA's sales will be arm's-length and market-based. Repsol further indicated that the pricing in the GPSA between Repsol and RENA are reflective of a market price in the U.S. Northeast, and utilizes a netback approach to determine pricing back to Repsol. The Applicant indicated that the price is structured to recover associated transportation costs with allowance for RENA to cover its expenses. Repsol also testified that, if there were a market in Atlantic Canada that had the same risk profile as RENA, the buyer would have had the same price structure.

The GPSA provides for the sale of a Daily Contract Quantity of up to 1 Bcf/d. RENA is obligated to take all volumes up to a maximum of 750,000 MMBtu/d (approximately 750 MMcf/d) as designated by Repsol. An additional 250,000 MMBtu/d (approximately 250 MMcf/d) may also be requested by RENA, and is subject to the acceptance and confirmation of Repsol. Given that not all of the applied-for export volume is contractually committed to the export market, Repsol reiterated its commitment to make gas available to Maritimes Canada on competitive terms and conditions.

4.6 Regulatory Authorizations and Environmental Impacts

In its application Repsol noted that the facilities required by Brunwick Pipeline to facilitate the proposed export were examined by the NEB in the GH-1-2006 proceeding and subsequently approved. During the current proceeding, Repsol confirmed that there are no upstream facilities directly related to the requested export licence other than those that have been previously assessed and approved by the appropriate regulatory authority.

Repsol also filed a copy of an order issued by the United States Department of Energy (DOE/FE Order No. 2489), which authorizes RENA to import up to 1 Bcf/d of natural gas from Canada to a maximum quantity of 9,125 Bcf over the 25-year term of the authorization. The Order is effective on 1 November 2008 and extends to 31 October 2033.

Views of the Applicant

In reviewing its perspective on how the MBP might apply in this case, Repsol noted that there were no complaints with respect to this application and believed that it had met all of the requirements of the MBP as they pertain to the export of regasified LNG. Repsol asserted that the Board has discretion in the manner in which it interprets and applies the MBP and asked that the Board not restrict Repsol's ability to export gas from any source including natural gas produced in Canada. Repsol did not file an EIA and instead referenced previous NEB publications in support of its application. According to Repsol, these publications indicate that Canadian natural gas markets continue to function well and that Canadian markets are not encountering any difficulty in meeting their requirements. Repsol also referenced a Board finding in GH-1-2006 that additional supply to the Maritimes is a necessary component for future natural gas development.

Repsol maintained that the primary source of supply for the applied-for export will be regasified LNG from the Canaport LNG Terminal but that Repsol should not be restricted in its ability to export any gas, including domestic Canadian gas. However, if a licence condition were imposed limiting the licence to the export of regasified LNG, Repsol indicated that it would prefer a

specific condition in the export licence as opposed to linking the export licence with the import licence. Specifically, Repsol suggested a licence condition that Repsol could not export domestic gas under the licence until it had filed a gas supply contract with the Board.

Repsol submitted that the U.S. export market is a necessary anchor market for the development of the Canaport LNG Terminal and the associated infrastructure. As well, Repsol believed that the applied-for export is in the public interest and would enable gas to be made available to Canadian markets.

Views of Interested Parties

In general, participants in this hearing were not opposed to the issuance of a gas export licence to export regasified LNG that is imported into Canada.

NSDOE did not oppose Repsol's application for the exportation of 1 Bcf/d, provided that the export licence applied only to regasified imported LNG, and did not apply to domestic gas. NSDOE submitted that the MBP is directly applicable and relevant in the context of an application to export indigenous Canadian gas. NSDOE further indicated that Repsol had not provided sufficient evidence for the Board to adequately assess the surplus requirement for exporting domestic gas, as required under the MBP. Therefore, NSDOE submitted that the Board should not permit this licence to apply to indigenous gas supply.

NSDOE also acknowledged the potential benefits related to development of the Canaport LNG Terminal and the Brunswick Pipeline, and the potential positive impacts on natural gas markets in Maritimes Canada.

Given that negotiations between Repsol and Irving Oil for an exclusive marketing arrangement in Maritimes Canada have not been concluded, and that some uncertainty may exist in the nature of Canadian access to regasified LNG from Repsol, Mr. Sauerteig proposed that the licence term be limited to 10 years to provide sufficient time for Repsol to conclude contractual negotiations and demonstrate the public interest benefits claimed by Repsol.

Other parties such as Irving Oil, Emera Brunswick Ltd. and the Province of New Brunswick supported Repsol's application for a 25-year gas export licence. Emera Brunswick Ltd. noted that the 25-year licence term is consistent with the term of Repsol's agreement for firm service on the Brunswick Pipeline. Emera Brunswick Ltd. further suggested that the tolerance flexibility to transport additional volumes would enable Repsol to meet market demands and would provide economic benefits to all parties.

Views of the Board

As already determined in Chapter 2 of these reasons, the Board will apply the MBP in assessing Repsol's gas export license application. The Board will do so having regard to the different components of the MBP as they relate to the specifics of this application.

Complaints

The Board notes that no complaints were filed pursuant to the MBP and no party has suggested that Canadian buyers have not had an opportunity to buy gas on terms and conditions similar to those of the proposed export.

Export Impact Assessment

The Board agrees that the regasified LNG imported by Repsol will be incremental to Canadian production and it may enhance the supply that is available to Canadians to meet their energy needs. The Board accepts Repsol's position that the potential addition of LNG supply in the Maritimes could provide a significant opportunity for future natural gas market development in that region.

Repsol, however, did not address the impact of exporting 1 Bcf/d (or a portion thereof) of Canadian-produced natural gas on the present and future availability of gas for Canadian requirements, even after the Board requested such information. As mentioned earlier, it is Repsol's position that if and when it acquires domestic gas supplies at market terms for the purpose of exports, such supplies, by definition, would be surplus to the foreseeable Canadian gas requirements. Therefore these export volumes should not pose difficulties for Canadians to meet their gas demand.

The Board has ruled that the MBP should be applied to assess this application and notes that Repsol did not satisfy the EIA requirement in relation to the export of Canadian-produced gas. Further, Repsol has not demonstrated that it has any domestic gas under its control upon which an EIA would be based.

Other Public Interest Considerations

The Board finds that the contractual arrangements made by Repsol for LNG supply and export sales are in alignment with the applied-for export volumes (approximately 1 Bcf/d). Furthermore, the Board notes that the applied-for volumes are consistent with the expected output and capability of the Canaport LNG Terminal and the capability of the Brunswick Pipeline.

The Board recognizes the substantial investments that have been made by the Applicant and its affiliates in the Canaport LNG Terminal. Also, in light of the integrated nature of the import and export arrangements and the specific circumstances of the LNG business, the Board notes the chain of long-term commitments supporting the import licence application as noted in Chapter 3 of these Reasons.

The export sales contract filed by Repsol is not an arm's-length agreement. However, the Board notes that downstream gas sales by

RENA will be market-based and at arm's-length. Furthermore, Repsol submits that the export price between Repsol and RENA will reflect a market price in the U.S. Northeast and utilize a netback approach to determine the price to Repsol Energy Canada. The Board accepts that the netback arrangement is structured to be durable over time and will recover appropriate transportation costs and expenses.

Although the firm transportation capacity held by RENA in the U.S. is less than the applied-for daily export volume, the Board believes that authorization of the full daily export quantity requested will allow for the greatest utilization of facilities built in Canada.

Licence Term and Conditions

The Board has considered the views expressed by Mr. Sauerteig, who proposed that the licence term be limited to 10 years. However, the Board is of the view that the applied-for 25-year term of the licence is consistent with the term of contractual commitments for LNG supply, transportation, and export sales made by Repsol. Given the significant financial and facility-related commitments made by the Repsol group of companies, the Board appreciates the Applicant's desire to obtain regulatory certainty with respect to its authorization to export natural gas.

The Board acknowledges the merits of Repsol's request for licence tolerances of ten percent and twenty percent on annual and daily volumes, respectively. The Board accepts the requested tolerances in this unique situation where the Canaport LNG Terminal is the single source of supply and Repsol is the sole user of the terminal and the Brunswick Pipeline. The Board takes notice of the fact that the requested daily tolerance corresponds to the variation between the sustained and peak capacity of the Canaport LNG Terminal. In the Board's view, the flexibility provided by the requested tolerances would enable Repsol to better serve changing markets and maximize use of the terminal and pipeline.

In issuing a gas export licence, it has generally been Board practice to include a sunset clause such that the licence would expire if export has not commenced within the specified timeframe. In this proceeding, Repsol did not take issue with the Board's possible inclusion of a two-year sunset condition. Accordingly, should the Board decide to issue an export licence to Repsol, the Board would require gas export to commence within two years of the licence start date in order for it to remain in effect.

Potential Environmental Effects

With regard to the potential environmental effects of the proposed export, the Board finds that there is a nexus between the Canaport LNG Terminal, the Brunswick Pipeline and the applied-for export licence. The Board

notes that the environmental impacts of the Canaport LNG Terminal to receive LNG, and the Brunswick Pipeline to deliver regasified LNG were previously reviewed and approved by relevant regulators. Therefore, the Board is of the view that further environmental assessment of these facilities for the purposes of the licence application is not required.

Export of Natural Gas Produced in Canada

There is no evidence that gas produced in Canada is available or connected to the Brunswick Pipeline. Moreover, new facilities needed to effect the proposed export have not been subjected to an environmental assessment by a relevant government authority.

The Board disagrees with Repsol's suggestion that it be allowed to export gas produced in Canada by way of this licence, subject only to Repsol having to file gas supply agreements at some point in the future. When such gas supply and associated facilities become available to Repsol in the future, Repsol could apply at that time for a gas export licence.

North American Free Trade Agreement

In regard to the export of regasified LNG, the Board notes that the LNG imported into Canada does not form part of Canada's reserves and is not subject to the terms of the North America Free Trade Agreement. Consequently, LNG which is imported, regasified and sold to markets in the U.S. under licence by Repsol is not gas produced in Canada and shall not be construed as gas "from Canada".

4.7 Conclusion

Having considered all of the factors, including the source of supply to be exported, the Board is satisfied that the quantity of regasified LNG proposed to be exported is in the Canadian public interest. The Board concludes that these volumes are incremental to Canadian supply and may also potentially enhance the supply available to Canadians to meet their energy needs.

With respect to the proposed export of natural gas produced in Canada, the Board finds that the applicant failed to satisfy Board's requirements under the MBP. Therefore, Repsol's request to export Canadian sourced gas under the proposed licence is denied.

Decision

The Board has decided to issue a licence to export natural gas with the terms and conditions described in Appendix III to Repsol Energy Canada Ltd, subject to the approval of the Governor in Council.

Chapter 5

Disposition

The foregoing chapters constitute our Reasons for Decision in respect of the application heard by the Board in the GH-1-2008 proceeding.

For these reasons, the Board:

DECIDES to issue a licence to import natural gas in liquefied form with the terms and conditions described in Appendix II to Repsol Energy Canada Ltd., subject to the approval of the Governor in Council; and

DECIDES to issue a licence to export natural gas with the terms and conditions described in Appendix III to Repsol Energy Canada Ltd., subject to the approval of the Governor in Council.

K.M. Bateman
Presiding Member

S. Leggett

S.A. Leggett
Member

G Habib

G.A. Habib
Member

September 2008
Calgary, Alberta

Appendix I

List of Issues for GH-1-2008 Proceeding

The Board has identified but does not limit itself to the following issues for discussion in the proceeding:

1. Application of the equitable distribution requirement to assess Repsol's request for a licence for long-term import of natural gas in liquefied form.

2. Application of the Market-Based Procedure to assess the merits of the Repsol application for a licence for long-term export of natural gas.

3. Access of Canadian buyers to the natural gas covered under the applied-for licences.

4. Adequacy of supply and markets which support the proposed licence for long-term import of natural gas in liquefied form.

5. Potential environmental effects and social effects that would be directly related to those environmental effects of the necessarily connected facilities that have not already been reviewed by relevant governing authorities

Appendix II

Terms and Conditions of the Licence to be Issued for Import of Natural Gas in Liquefied Form

General

1. Repsol Energy Canada Ltd. (Repsol) shall comply with all of the terms and conditions contained in this Licence unless the Board otherwise directs.

Licence Term, Conditions and Point of Import

2. (a) Subject to Condition 2(b), the term of this Licence shall commence on 1 November 2008 or the date of first deliveries thereafter to the Canaport Liquefied Natural Gas (LNG) Marine Terminal and Multi-Purpose Pier and end on 31 October 2033.

   (b) The term of this Licence shall end on 31 October 2010 unless LNG imports commence hereunder on or before that date.

3. The quantity of natural gas in liquefied form that can be imported under the authority of this Licence are:

   (a) Annual LNG volume not exceeding 10,480,000 10^3m^3 (370 Bcf) of LNG in its gaseous state, which is the approximate gas equivalent of 7,927,000 tonnes of LNG; and

   (b) Term LNG volume not exceeding 262,000,000 10^3m^3 (9,250 Bcf) of LNG in its gaseous state, which is the approximate gas equivalent of 198,200,000 tonnes of LNG.

4. As a tolerance, the amount that may be imported under the authority of this Licence in any consecutive 12-month period may exceed the annual limitation imposed in Condition 3 by ten percent (10%).

5. Natural gas in liquefied form that may be imported under the authority of this Licence shall be delivered to the point of import at the Canaport LNG Marine Terminal and Multi-Purpose Pier near Saint John, NB.

Reporting

6. In addition to the information required under *National Energy Board Export and Import Reporting Regulations*, Repsol shall file with the Board, within 30 days following the end of each calendar month, a report indicating whether imports have been made, and if so, including, by tanker load, the following information:

    - Name of the LNG tanker;
    - Country of origin of the LNG; and
    - LNG volume in cubic metres of LNG in its gaseous state and in tonnes.

Appendix III

Terms and Conditions of the Licence to be Issued for Export of Natural Gas

General

1. Repsol Energy Canada Ltd. (Repsol) shall comply with all of the terms and conditions contained in this Licence unless the Board otherwise directs.

Licence Term, Conditions and Point of Export

2. (a) Subject to Condition 2(b), the term of this Licence shall commence on 1 November 2008 or the date of first deliveries thereafter on the Emera Brunswick Pipeline at the international border near St. Stephen, NB and end on 31 October 2033.

   (b) The term of this Licence shall end on 31 October 2010 unless exports commence hereunder on or before that date.

3. The quantity of natural gas that may be exported under the authority of this Licence are:

   (a) Daily volume of natural gas not exceeding 28,320 10^3m^3 (1 Bcf);

   (b) Annual volume of natural gas not exceeding 10,340,000 10^3m^3 (365 Bcf); and

   (c) Term volume of natural gas not exceeding 258,500,000 10^3m^3 (9,125 Bcf).

4. (a) As a tolerance, the amount that may be exported in any 24-hour period under the authority of this Licence may exceed the daily limitation imposed in Condition 3 by twenty percent (20%); and

   (b) As a tolerance, the amount that may be exported under the authority of this Licence in any consecutive 12-month period may exceed the annual limitation imposed in Condition 3 by ten percent (10%).

5. Natural gas exported under the authority of this Licence shall be delivered to the point of export on the Emera Brunswick Pipeline at the international border near St. Stephen, NB.

Exclusion and Reporting

6. Natural gas that may be exported under the authority of this licence shall be the regasified natural gas in liquefied form (LNG) received at the Canaport LNG Marine Terminal and Multi-Purpose Pier and shall not include any natural gas produced in Canada.

7. Repsol shall file with the Board, within thirty (30) days following the end of each calendar month, a report on exported gas volumes and revenues pursuant to the *National Energy Board Export and Import Reporting Regulations*. As part of this report, Repsol shall indicate whether exports have been made, and if so, confirming the source of the gas as regasified LNG and compliance with Condition 6.